IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 672 of 2004
In
SPECIAL CIVIL APPLICATION No. 17984 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SUBHASHBHAI BHANABHAI PATEL & 3 - Appellant(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR UTPAL M PANCHAL for Appellant(s) : 1 - 4.
Ms. Asmita Patel, AGP for Respondent(s) : 1 - 2.
MR Kirtikant S. Nanavati, Sr. Advocate with Mr. KD GANDHI for Nanavati Associates for Respondent(s) : 3.

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

and

HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 03/07/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.M.KAPADIA)

1. Challenge in the instant intra-court appeal under clause 15 of the Letters Patent is to the judgment and order dated 26.12.2003 rendered in Special Civil Application No. 17984 of 2003 by the learned Single Judge of this Court by which the prayers to issue a writ of certiorari or any other appropriate writ, order or direction, to quash and set aside the impugned communication dated 4.9.2003 issued by respondent No.1 - State of Gujarat and to quash the decision of respondent No.1 not to refer the industrial dispute between the appellants and the respondent No.3 – Reliance Industries Limited ('RIL' for short) in Conciliation Case No.111 of 2001 to the industrial forum and also to issue a writ of

mandamus or any other appropriate writ, order or direction, commanding the respondent No.1 to make a reference to the industrial forum of the industrial dispute raised by the appellants against the RIL which is the subject matter of Conciliation Case No.111 of 2001, have been refused and thereby the petition filed by the appellants has been dismissed with no order as to costs.

2. The appellants were the office bearers of a registered Trade Union called Reliance Karmachari Sangh. Appellant No.1 was the President, appellant No.2 was the Treasurer and appellant Nos.3 and 4 were the Executive Members of the said Union. The said Union is recognized by respondent No.3 - RIL.

2.1. The appellants raised an industrial dispute through charter of demands and strike notice dated 8.3.2001. At that time they were in service of RIL. The appellants were also declared to be 'protected workmen' as defined under Section 33

(4) of the Industrial Disputes Act, 1947 ('the Act' for short) read with Rule 66 (4) of the Industrial Disputes Gujarat Rules, 1967 ('the Rules' for short). Despite the protection accorded to the appellants under Section 33 (4) of the Act and despite the pendency of conciliation proceedings between the Union and RIL before respondent No.2, Conciliation Officer –Assistant Commissioner of Labour, RIL dismissed the appellants from service on 20.11.2001 without holding any departmental inquiry. Apart from the fact that their dismissal vide separate orders dated 20.11.2001 was in violation of the provisions of the Act and in clear breach of the principles of natural justice, their dismissal was also in gross violation of the Standing Orders applicable to the parties to the petition.

2.2. The appellants had, therefore, filed a writ petition being Special Civil Application No.6631 of 2002 under Article 226 of the Constitution of India in the month of July 2002 and prayed for the following reliefs:

"(A)A writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction may kindly be issued

(i)directing the respondent No.2 – Assistant Commissioner of Labour to submit its failure report in Conciliation Case No.IDC 111/2001 to the State Government with immediate effect and further directing the said respondent to accept and receive the complaint u/s. 33A of Industrial Disputes Act of the appellants and to refer it for adjudication to the Industrial Tribunal or appropriate Court of law and further to lodge appropriate criminal proceedings u/s. 31 for the breach of Section 33A of the Industrial Disputes Act;

(ii) Directing the State Government to make reference with immediate effect upon the receipt of failure

report of the Assistant Commissioner of Labour to the appropriate Court;

(B) Pending the admission, hearing and final disposal of this petition, the Assistant Commissioner of Labour may kindly be directed to send its failure report dated 31.7.2001 to the Secretary, Labour & Employment Department with immediate effect;

(C) Grant such other and further reliefs, as are deemed fit, in the interest of justice."

2.3. The case of the appellants in Special Civil Application No. 6631 of 2002 was that though the conciliation proceedings between the Union and RIL had failed and failure report dated 31.7.2001 had been drawn by the Conciliation Officer in Conciliation Case No.111 of 2001, the said failure report was not submitted to respondent No.1 – State of Gujarat. Thus the appellants' dispute which was pending since long, had not been attended by the statutory authority though

they were bound to act in accordance with law. Another grievance of the appellants was that though the proceedings were pending before the Conciliation Officer, the said authority had refused to register the complaint of the appellants under Section 33A of the Act which was required to be forwarded to the Industrial Tribunal for adjudication. Thus the State Government had also remained indolent by turning a blind eye to the grievances of the appellants by not calling for the failure report dated 31.7.2001 drawn by the Conciliation Officer in Conciliation Case No.111 of 2001 between the appellants and RIL.

2.4. It was further case of the appellants that Special Civil Application No.6631 of 2002 came to be disposed of by this Court vide order dated 6.8.2003 with a specific direction to the State Government to consider and decide the failure report dated 31.7.2001 in accordance with law for the purpose of deciding whether reference of the industrial dispute between the appellants and RIL

ought to be made to the industrial forum or not.

2.5. In compliance of the said order, State Government issued a communication dated 4.9.2003, in writing, conveying its refusal to refer the industrial dispute between the appellants and RIL to the industrial forum. It was the case of the appellants that while taking the said decision, the State Government clearly overstepped its limit by committing a breach of the oral order dated 6.8.2003 passed by this Court in Special Civil Application No.6631 of 2002 and by flouting the mandatory provisions of the Act.

2.6. Aggrieved thereby the appellants filed Special Civil Application No.17984 of 2003 and claimed the reliefs to which reference has been made in earlier paragraph of this judgment.

2.7. The learned Single Judge, after appreciating, evaluating, scrutinizing and critically analysing the averments made in the petition, documents annexed therewith and also

the order dated 6.8.2003 rendered in Special Civil Application No. 6631 of 2003 and after hearing the learned advocate for the appellants, dismissed the petition at the admission stage without issuing notice to the other side with no order as to costs, giving rise to instant intra-court appeal under Clause 15 of the Letters Patent at the instance of the original petitioners.

3. Mr. Utpal Panchal, learned advocate of the appellants, has mainly raised the following four contentions:

(i) RIL is a public utility service and it being a public utility service, this may disturb the industrial relation situation at the complex level and may result into disturbance in normal functioning. Therefore, appropriate Government was required to make reference to the Industrial Tribunal.

(ii) The appropriate Government was required by

an order dated 6.8.2003 passed in Special Civil Application No. 6631 of 2002 to decide with regard to making of a reference considering only the failure report dated 31.7.2001 issued by the Conciliation Officer.

(iii) In view of the substitution of new section 22 in the Trade Union Act, 1926 as amended by Trade Unions (Amendment) Act, 2001 with effect from 3rd September 2001, as per explanation to sub-section (2), the terminated employee shall not be construed as outsider for the purpose of holding an office in Trade Union.

(iv) An employee continues to be in service as if the order of discharge or dismissal was never passed if the approval of the order of discharge or dismissal is not obtained under the provisions of section 33 (2) (b) of the Act.

In support of the above submission, Mr. Panchal has relied upon the decision of the Supreme Court in the case of Jaipur Zila Sahakari Bhoomi Vikas

Bank Limited v. Ram Gopal Sharma and others, (2002) 2 SCC 244.

According to Mr. Panchal, the learned Single Judge has failed to consider the above four aspects which has resulted into miscarriage of justice and, therefore, the impugned order passed by the learned Single Judge deserves to be quashed and set aside by allowing the appeal and thereby directing respondent No.1 to make reference of the industrial dispute raised by the appellants against RIL to the industrial forum. He, therefore, urged to allow the appeal.

4. Ms. Asmita Patel, learned AGP appearing for respondent Nos.1 and 2, has supported the impugned judgment and order passed by the learned Single Judge all throughout. According to her, as the appeal lacks merit, no interference is called for with the impugned order. She, therefore, urged to dismiss the appeal.

5. In counter submission, Mr. KS Nanavati,

learned Senior Advocate for Nanavati Associates appearing for respondent No.3 – RIL, has submitted that neither of the above contentions advanced by Mr. Panchal, learned advocate of the appellants, merits consideration because the appellants have failed to produce any document showing that RIL was a public utility service. It is also asserted by him that the appropriate Government has considered the order passed by the learned Single Judge in Special Civil Application No. 6631 of 2002 and thereafter by cogent reasons, refused to make reference and, therefore, the learned Single Judge was right in dismissing the petition. Therefore, according to him, the appeal lacks merit and deserves to be dismissed.

6. This Court has considered the submissions advanced by Mr. Utpal Panchal, learned advocate for the appellants, Ms. Asmita Patel, learned AGP for respondent Nos.1 and 2 and Mr. KS Nanavati, learned Senior Advocate for respondent No.3 – RIL, perused the impugned order passed by the

learned Single Judge as well as the averments made in the memo of petition and the documents forming part of it and the averments made in the appeal memo and reply affidavits filed by respondent Nos.1 and 2 as well as respondent No.3 separately and also the rejoinder affidavit filed in these proceedings and the submissions advanced by the learned advocates appearing for the parties and the judgment cited at the bar.

7. As per the statutory provisions contained in section 10 of the Act, they empower the State Government to refer the dispute to a Board or to a Court for inquiry or to Labour Court or Tribunal for adjudication if, as per its opinion, any industrial dispute exists or is apprehended. It is the discretion of the State Government to refer the matter to any of the authority or Court provided that there has been existence or apprehension of industrial dispute and not otherwise. Labour and Employment Department had issued notification dated 18.8.2001 by which it empowered the concerned Labour Commissioner to

exercise powers to refer the dispute under Section 10 of the Act.

8. It may be noted that the then General Secretary of Reliance Karmachari Sangh, Hajira, Surat, submitted letter dated 8.3.2001 to RIL intimating about notice of strike and also made several demands in the said letter. The said letter was received by respondent No.2. Hence he had included demands of the workmen mentioned in the strike notice in conciliation proceedings on 12.3.2001. The conciliation talks were also held in presence of respondent No.2. But as appellants as well as RIL could not reach a consensus, a failure report was submitted by respondent No.2 vide letter dated 31.7.2001 to respondent No.1. There had been change in office bearers of Reliance Karmachari Sangh and new team had taken over. Thereafter new General Secretary Mr. Rakeshbhai B. Patel brought a letter dated 26.6.2002 to respondent No.2 in which he had intimated about withdrawal of strike notice dated 8.3.2001 issued by Reliance Karmachari Sangh and

further requested to file the said notice. Thus by the said letter, the newly elected General Secretary of Reliance Karmachari Sangh had withdrawn the strike notice as well as all the demands issued by the very same Reliance Karmachari Sangh under section 25 (T) of the Act. Office of respondent No.2 forwarded the said letter to Labour Commissioner, Ahmedabad vide his letter dated 1.7.2002. Initially respondent No.2 included demands as they were raised in the letter dated 8.3.2001 by the Reliance Karmachari Sangh and on that basis the failure report was submitted. However, later, on account of withdrawal of the said letter and consequent withdrawal of the demands by the very same Karmachari Sangh vide its letter dated 26.6.2002, the existence of industrial dispute no longer remained.

9. There is no manner of doubt that the question of referring the industrial dispute arises only when there has been existence of industrial dispute. In instant case, there was no existence

or apprehension of industrial dispute and hence the Labour Commissioner, Ahmedabad forwarded the decision dated 2.9.2002 by which it closed the Conciliation Case No.111 of 2001 and intimated to the concerned parties accordingly. While exercising powers given to him vide aforesaid notification, the Labour Commissioner had also kept in mind the aspect of harmony and peace between the employees and management and also borne in mind the interest of majority of the employees of the said Karmachari Sangh. The then General Secretary of Reliance Karmachari Sangh, appellant No.1, preferred Special Civil Application No. 6631 of 2001 before this Court and by order dated 6.8.2003 this court directed the State Government to consider and decide the aforesaid failure report dated 31.7.2001 within four weeks in accordance with law. Pursuant to the order dated 6.8.2003, respondent No.1 examined the entire case papers and thereupon came to the conclusion that the order passed by Labour Commissioner, Ahmedabad was just and proper and accordingly respondent No.1 passed the

order dated 4.9.2003.

10. It may be appreciated that as per the constitution of the Union, office bearers of the Union are to be elected in Annual General Meeting to be held every year in the month of January/February. Accordingly on 25.2.2001, Reliance Karmachari Sangh, a registered Trade Union recognized by the management of RIL held an Annual General Meeting. Appellant No.1 herein who was the President of the Union at the relevant time, made an attempt to pass a resolution to continue the same Executive Body for the next year i.e., 2001-2002. However, a group led by A.C. Modi, objected to the said resolution and demanded election. Thereafter there were disputes between the two fractions of the Union and there were claims and counter-claims from both the groups. The group led by appellant No.1 insisted that there was a resolution passed in the Annual General Meeting and the old Executive Committee be accepted as the Committee for the next year whereas the group led by A.C. Modi protested and

held another Annual General Meeting on 30.4.2001 after giving due notice to the General Secretary for holding the meeting as per the constitution of the Union and elected new Executive Committee for the year 2001-2002. In the meantime, on 8.3.2001, appellant No.1 issued a notice of strike, which, as a matter of fact, was in substance, a complaint for unfair labour practice alleged to have been adopted by the management. The said notice was admitted in conciliation vide Conciliation Case No.111 of 2001 on the said date. After several hearings, the Assistant Labour Commissioner, Surat, sent his failure report to the Additional Chief Secretary (L&E) Gujarat vide his failure report dated 31.7.2001.

11. Thereafter on 4.10.2001, appellant No.1 was expelled from the post of President and S.R. Patel was appointed as President by majority of the Executive Members of the Union. The appellants were dismissed from the services of the RIL on 20.11.2001 on the charge of demanding huge amount of money from the management for

signing long term settlement. The office bearers of Reliance Karmachari Sangh, in the mean time, had raised an industrial dispute for revising the wages and other service conditions which was admitted in conciliation and an amicable settlement was arrived at between the RIL and the Union. As per the constitution of the Union, once again in the month of February 2002, the Union announced an Annual General Meeting to elect new Executive Body for the year 2002-2003. The appellants did not contest the election as they were dismissed from the services of RIL on 20.11.2001. The new Executive Body was elected and declared on 13.2.2002. The appellants had not raised any dispute challenging the election of the office bearers of the Union for the year 2002-2003. After the said election the new Executive Committee led by A.C. Modi as President of the Union took over the charge of the Union office. In the mean while the Additional Chief Secretary sent back the case referred to him along with the failure report to the Labour Commissioner's office since as per the

notification the power for making a reference was conferred on the Labour Commissioner. Upon receipt of the said papers from the office of the Additional Chief Secretary, the Labour Department was required to take a decision as to whether there existed a dispute between the parties which needed to be referred to the appropriate court for adjudication. However, on 26.6.2002, the Union vide its letter addressed to the Assistant Labour Commissioner withdrew the strike notice dated 8.3.2001. In view of this, the respondent authorities did not refer the matter for adjudication since there was no industrial dispute existing between the parties on the said date. Aggrieved by the same, the appellants preferred a writ petition being Special Civil Application No.6631 of 2002, inter alia, seeking a writ of mandamus against the respondent authorities to make a reference of the industrial dispute raised by the union vide its strike notice dated 8.3.2001. The said petition came up for hearing and was finally disposed of by this Court vide order dated 6.8.2003 by directing the

State Government to consider and decide on the failure report dated 31.7.2001.

12. On a perusal of the order dated 6.8.2003 passed by this Court in Special Civil Application No. 6631 of 2002, it is seen that Government was required to consider the failure report dated 31.7.2001 issued by the Conciliation Officer *de-novo* and, according to us, consideration of the failure report *de-novo* did not preclude the Government from considering the relevant material to take a decision as to whether a reference was to be made or not. In reaching the said conclusion, the Government relied on the original strike notice and the letter dated 26.6.2002 withdrawing the said strike as well as the charter of demands which, the learned Single Judge noted in his judgment that they were not extraneous material and, therefore, the learned Single Judge dismissed the petition.

13. Therefore, according to us, the Labour Commissioner was justified in refusing to refer

the matter inasmuch as it was the existence of industrial dispute which would clothe the appropriate Government with power to make the reference to the Court to adjudicate it. If there was no industrial dispute in existence or apprehended, the appropriate Government lacked the power to make any reference. An industrial dispute as defined under section 2 (k) of the Act or an apprehended industrial dispute was a condition precedent for existence of power under Section 10 of the Act by the appropriate Government. Since the strike notice dated 8.3.2001 issued by the Union was subsequently withdrawn, the appropriate Government rightly refused to refer the matter for adjudication and the learned Single Judge has, therefore, rightly rejected the petition. The appellants herein have accepted their dismissal and have till date not raised any dispute as regards their termination. The elections which were held in February 2002 appointing the new body of Executive Committee for the year 2002-2003 has also not been challenged under the provisions of the Trade

Unions Act either by the appellants or any member of the erstwhile committee or the union. If no industrial dispute existed, as on the date of making of a reference, powers under Section 10 of the Act cannot be exercised by the appropriate Government. Even otherwise, if there was no industrial dispute existing between the parties, referring a matter for adjudication would disturb industrial peace.

14. After considering the aforesaid facts and more particularly the fact that there existed no industrial dispute as contemplated under the Act, the Deputy Secretary, Labour & Employment Department, vide his order dated 4.9.2003, refused to refer the matter for adjudication. While passing the said order, the Deputy Secretary, relied on the fact that the strike notice dated 8.3.2001 under section 25 (T) of the Act was withdrawn by the Union vide its letter dated 26.6.2002 and, therefore, there existed no industrial dispute between the parties which needed to be referred for adjudication.

15. So far as the first contention of Mr. Panchal that RIL was a public utility service is concerned, according to us, it has no substance. The appellants could not produce any notification on record showing that RIL was a public utility service. The learned Single Judge, in paragraph 7 of the impugned order, recorded a categorical finding that Mr. Mehta, learned advocate who appeared on behalf of the appellants, could not point out any such notification from the record of the earlier petition. In absence of any such notification, an assertion by the appellants that RIL was declared to be a public utility service was not sufficient for the Court to hold that RIL was a public utility service. Even from the two communications addressed to Assistant Labour Commissioner, Surat and the Labour Commissioner, Ahmedabad, it could not be held that RIL was a public utility service. If at all the appellants wanted to rely on the status of RIL as a public utility service, the appellants ought to have produced a notification to that effect. In

aforesaid view of the matter, the first contention advanced by Mr. Panchal, learned advocate of the appellants, fails and accordingly it is rejected.

16. So far as the second contention of Mr. Panchal, learned advocate of the appellants, that the appropriate Government was required, by order dated 6.8.2003 passed in Special Civil Application No. 6631 of 2002, to decide with regard to making of a reference considering only the failure report dated 31.7.2001 issued by the Conciliation Officer, is concerned, according to us, it has also no substance and merit. A perusal of the order dated 6.8.2003 passed in Special Civil Application No. 6631 of 2002 shows that a direction was issued by the learned Single Judge to decide as to whether any reference was to be made or not on the basis of the failure report dated 31.7.2001 issued by the Conciliation Officer. The learned Single Judge in the order observed that the State Government had merely to consider the failure report *de novo* which did not

preclude the Government from considering the relevant material to take a decision as to whether a reference was to be made or not. In reaching the said conclusion, the State Government relied on the original strike notice and the letter dated 26.6.2002 withdrawing the said strike as well as the charter of demands which, the learned Single Judge noted, was in no manner extraneous material and thus found that no error was committed by the Government. Therefore, the second contention of Mr. Panchal also fails and accordingly it is rejected.

17. So far as the third contention raised by Mr. Panchal is concerned, it has no substance and merit since the appellants were removed from the service of RIL and, therefore, they themselves did not contest the election. As an outsider they could have contested the election but they did not do so. Therefore, they ceased to be the office bearers of the Union.

18. So far as the fourth contention of Mr.

Panchal is concerned, it is also devoid of any merit. Section 33 (2) (b) of the Act is applicable to the employee concerned for his individual act. He cannot be considered to be continued in service for the purpose of espousing the cause of the Union if he ceased to be an office bearer of the Union. Therefore, there is no question of obtaining approval of the order of discharge or dismissal under Section 33 (2) (b) of the Act.

So far as the reported decision of the Supreme Court in the case of Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd (supra) relied upon by Mr. Panchal, learned advocate of the appellants, the said decision rested on the facts of that case and it has no application to the facts of the present case. In that case the employee concerned was dismissed from the service during the pendency of the proceedings which he had initiated against the employer while in instant case the appellants ceased to be the office bearers of the Union and, therefore, they have no

right to espouse the cause of the Union.

Therefore the fourth contention advanced by Mr. Panchal also is rejected being meritless.

19. At the cost of repetition, it is pertinent to note that the appellants/original petitioners were no longer in service of the RIL as they were dismissed from the service on charge of demanding huge amount of money for signing long term settlement with the management. In February 2002, a new executive body was elected and the appellants did not contest the said election. The new executive body of the Union was elected and declared on 13.2.2002 and thus the appellants ceased to be the President or any other Office bearer of the Union. The appellants filed Special Civil Application No. 17984 of 2003 against the refusal to grant the reference in December 2003. The appellants, at that time, were not members of the governing body of the Union and hence, even otherwise, were not in a place of status to file the said petition. If the cause title of the

petition is glanced at, the appellants have declared themselves to be the President and other members of the Executive Office of the Union which is factually incorrect and which error has still persisted even in instant appeal, whereby the appellants have made a deliberate and determined effort to mislead this Court to get favourable orders. According to this Court, this is a matter of serious concern. The appellants have misrepresented before the learned Single Judge at the time of filing of the petition and before this Court as well at the time of filing Letters Patent Appeal. The appellants are, therefore, not entitled to the discretionary relief in a petition filed under Article 226/227 of the Constitution of India.

20. We find ourselves in complete agreement with the findings, ultimate conclusion and the resultant order passed by the learned Single Judge dismissing the petition as according to us no other finding, conclusion or order is possible on the facts and in the circumstances emerging

from the record of the case, except the one reached by the learned Single Judge, which, according to us, does not call for interference in this appeal which is filed under Clause 15 of the Letters Patent. Therefore, the impugned order passed by the learned Single Judge requires our confirmation.

21. Seen in the above context, this intra-court appeal lacks merit and deserves to be dismissed by confirming the order dated 26.12.2003 passed by the learned Single Judge in Special Civil Application No. 17984 of 2003.

22. For the foregoing reasons, the appeal fails and accordingly it is dismissed, the result of which is that the order dated 26.12.2003 passed in Special Civil Application No. 17984 of 2003 by the learned Single Judge is confirmed. There shall be no order as to costs.

(A.M. Kapadia, J.)

(Harsha Devani, J.)

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